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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 PATRICK PIERCE,
12 Plaintiff,

13 v.

14 WELLS FARGO BANK, N.A.
15 and DOES 1 through 20,
16 Defendants.

CASE NO. C08-01554 JF (HRL)

**FIRST AMENDED COMPLAINT
FOR BREACH OF CONTRACT,
PROMISSORY ESTOPPEL,
FRAUD, FRAUDULENT
PROMISE, AND NEGLIGENT
MISREPRESENTATION**

17
18 **INTRODUCTION**

19 1. Plaintiff Patrick Pierce ("Pierce") is a former employee of defendant Wells Fargo
20 Bank, N.A. ("WFB"), and he was also previously employed by non-party Greater Bay Bancorp
21 ("GBB"). During 2007 WFB acquired GBB, and in the course the acquisition process GBB and
22 WFB made promises and representations to Pierce that if he continued to work for GBB through
23 the acquisition, after the effective date of the acquisition WFB would not force him to accept a
24 position at WFB, but would permit him to instead elect to receive severance benefits under a
25 Change in Control Pay Plan that had been established by GBB. However after Pierce had worked
26 for GBB through the date of the acquisition, and when he sought to elect benefits under the Change
27 in Control Pay Plan pursuant to WFB's and GBB's promises and representations, WFB refused to
28 cause those benefits to be made available to him. WFB has persisted in its refusal to cause those

1 severance benefits to be made available to Pierce, and the plan administrator has refused to pay
2 benefits under the Change in Control Pay Plan. Pierce accordingly seeks by this action to recover
3 the damages that he has sustained as the result of WFB's and GBB's: (1) failures and/or refusals to
4 fulfill their contractual obligation to cause the Change in Control Pay Plan to provide the promised
5 and represented severance benefits; (2) failures and/or refusals to implement their promises and
6 representations to provide such benefits, under principles of promissory estoppel; (3) false
7 representations that they would be entitled to the promised and represented benefits under the
8 Change in Control Pay Plan; and (4) false promises and representations, without any intention of
9 performing such promises and representations, that they would cause the Change in Control Pay
10 Plan to provide such benefits. Pierce also seeks payment of costs, and such other relief as may be
11 appropriate.

12 **JURISDICTION**

13 2. Pierce contends that this court lacks jurisdiction on either federal question or
14 diversity grounds, and that the action should be remanded to state court. WFB contends, however,
15 in its Notice of Removal of this action from state court that this court has jurisdiction under 28
16 U.S.C. § 1331 and 29 U.S.C. § 1144(a).

17 **VENUE**

18 3. Because Pierce contends that this court lacks subject matter jurisdiction, he further
19 contends that venue is improper in this court. If the court possesses subject matter jurisdiction,
20 however, venue would be proper in this court pursuant to 28 U.S.C. section 1391(a), in that a
21 substantial part of the events giving rise to the claim occurred in this district, namely WFB's and
22 GBB's promises and representations, and WFB's failure to perform in accordance with such
23 promises and representations.

24 **INTRADISTRICT ASSIGNMENT**

25 4. Because Pierce contends that this court lacks subject matter jurisdiction, he further
26 contends that venue is improper in any court in this district. If the court possesses subject matter
27 jurisdiction, however, this action would be required to be assigned to the San Jose Division of this
28 District under Civil Local Rule 3-2(c) and (d), by virtue of the facts alleged in paragraph 3, above.

PARTIES

5. Plaintiff Patrick Pierce is an individual who works in Palo Alto, in the County of Santa Clara.

6. Defendant Wells Fargo Bank N.A. is a national banking association with its principal place of business in California, and which carries on business in, among other places, the County of Santa Clara.

7. Pierce is ignorant of the true names or capacities of the individual and business entity defendants sued herein under the fictitious names Doe 1 through 10 inclusive. Pierce will amend this complaint to allege the true names and capacities of the Doe defendants when ascertained. Each of such defendants is in some way responsible for the wrongful acts complained of below.

GENERAL ALLEGATIONS

8. During or about May, 2007 WFB and GBB entered into an agreement under which WFB agreed to acquire GBB in a stock-for-stock merger. That acquisition was implemented on its effective date of October 1, 2007.

9. At the time that the merger of WFB and GBB was implemented there was in existence a Change in Control Pay Plan (the "CIC Plan") at GBB which provided severance benefits for eligible employees of GBB whose employment terminated in connection with the merger, or who were constructively terminated by not being offered comparable positions with WFB. In the case of a GBB employee at the level of Pierce those promised and represented severance benefits (the "Severance Benefits") potentially included but were not limited to an amount equivalent to twelve months pay at the rate at which he was being compensated at the time of ceasing work, plus a bonus and other benefits.

10. At various times, including but not limited to June 22, 2007 and September 10, 2007, authorized agents of GBB and WFB promised and represented to Pierce that if he continued to work for GBB through the merger with WFB then Pierce:

- (a) would not be forced to take a position with WFB after the merger that he did not want; and,

1 (b) would be entitled to receive Severance Benefits if he elected not to take a full-time
2 position with WFB.

3 11. The promises and representations referred to in the preceding paragraph were made
4 to Pierce by, among others, Ken Shannon, Executive Vice President of GBB, and Jeanette Mebane,
5 Vice President of WFB. Ken Shannon was expressly authorized by Don Fracchia, Executive Vice
6 President of WFB, to make such promises and representations on behalf of WFB.

7 12. Acting in reliance on the promises and representations referred to above, Pierce
8 continued to work for GBB until the effective date of the merger, and did not pursue other
9 employment opportunities, in the expectation that if he chose not to accept a full-time position with
10 WFB after the merger he would receive compensation equivalent to the Severance Benefits.

11 13. WFB and GBB caused the CIC Plan to be amended as of September 27, 2008.
12 Despite the fact that this amendment gave WFB and GBB an ideal opportunity to include among
13 such amendments a provision for payment of the benefits that both WFB and GBB had promised
14 and represented would be available to Pierce if he elected not to take a full-time position with
15 WFB, WFB and GBB failed to include the promised and represented benefits among the
16 amendments to the plan.

17 14. WFB and GBB did not inform Pierce that the amendments that were made to the
18 plan as of September 27, 2008 did not include amendments giving effect to the promised and
19 represented benefits, with the result that Pierce continued to work for GBB through the date of the
20 merger in continuing reliance on the promise and representation that he would receive such benefits
21 if he elected not to accept a full-time position with WFB after the merger. WFB did not disclose to
22 Pierce that the amendments were inconsistent with GBB's and WFB's promises and
23 representations, nor even that the plan had been amended, until June 10, 2008, when WFB included
24 a copy of the amended CIC Plan in a filing (Document 26) in opposition to Pierce's motion to
25 remand this action to state court.

26 15. By letter dated November 1, 2007 WFB informed Pierce that the position that WFB
27 had "identified" for him post-merger was that of Loan Adjustment Manager 3 at WFB's Cowper
28 Street Branch in Palo Alto. The letter further stated that this would be a transition position through

1 February 28, 2008, not a full-time position.

2 16. By letter dated November 8, 2007 WFB asserted that offering Pierce the transition
3 position referred to in the preceding paragraph excused WFB from any obligation to pay the
4 Severance Benefits to Pierce.

5 17. By letters dated November 30, 2007 and December 19, 2007, counsel for Pierce
6 rejected WFB's position and reiterated Pierce's entitlement to receive the Severance Benefits. In
7 the December 19, 2007 letter counsel for Pierce stated, among other things that:

8 Although this has not been formally communicated, it appears that WFB may
9 be taking the position that Mr. Pierce is not technically entitled to receive a
10 Change in Control Package. Whether or not that is the case is not a matter
11 that we need to address at this time, however, because WFB and GBB made
12 representations and promises that Mr. Pierce would be entitled to receive a
13 package, and he detrimentally relied on those representations and promises to
change his position to his prejudice. Under those circumstances, WFB is
liable for any damages that Mr. Pierce may suffer, namely a loss of benefits
equivalent to those that accrue to a person entitled to benefits under the
Change in Control Package.

14 18. By letter dated January 10, 2008 WFB denied that its' and GBB's representatives
15 had made the promises and representations relied on by Pierce, and alleged in the alternative that if
16 such promises and representations had been made by Ken Shannon then he did not have the
17 authority to make those promises and representations. WFB further denied that Pierce was entitled
18 to receive Severance Benefits either based on the promises and representations relied on by Pierce,
19 or under the CIC Plan.

20 19. On February 4, 2008 Pierce filed this action (the "Action") in the Santa Clara
21 County Superior Court, asserting the following claims against WFB:

- 22 (a) a claim for breach by GBB of the contract formed by Pierce's
23 acceptance of GBB's offer constituted by its promise and
24 representation referred to in paragraph 10, above;
- 25 (b) a claim for breach by WFB of the contract formed by Pierce's
26 acceptance of WFB's offer constituted by its promise and
27 representation referred to in paragraph 10, above;
- 28 (c) a claim for promissory estoppel based on Pierce's acceptance of

- 1 GBB's promise and representation referred to in paragraph 10, above;
- 2 (d) a claim for promissory estoppel based on Pierce's acceptance of
- 3 WFB's promise and representation referred to in paragraph 10,
- 4 above;
- 5 (e) a claim for fraud based on intentional misrepresentation based on
- 6 Pierce's reliance on GBB's promise and representation referred to in
- 7 paragraph 10, above;
- 8 (f) a claim for fraud based on intentional misrepresentation based on
- 9 Pierce's reliance on WFB's promise and representation referred to in
- 10 paragraph 10, above;
- 11 (g) a claim for fraud based on negligent misrepresentation based on
- 12 Pierce's reliance on GBB's promise and representation referred to in
- 13 paragraph 10, above; and,
- 14 (h) a claim for fraud based on negligent misrepresentation based on
- 15 Pierce's reliance on WFB's promise and representation referred to in
- 16 paragraph 10, above.

17 20. Simultaneously with the filing of this action, by letter also dated February 4, 2008,

18 Pierce applied for severance benefits under the CIC Plan. In applying for such benefits Pierce

19 expressly stated that his application was being made without prejudice to his right to assert the

20 separate and independent claims asserted in this action, thus:

21 Please note that this claim is being made under reservation of all rights to

22 assert all of the claims that are asserted in the Action. In particular, it remains

23 my position that independently of my claim under the Plan I am also entitled

24 to enforce the promises and representations made to me that even if I elected

not to take a comparable position with WFB I would be entitled to receive

benefits under the Plan.

25 21. By letter dated April 24, 2008 WFB, in its capacity as the administrator of the CIC

26 Plan, rejected Pierce's claim for benefits under the plan. Subsequently, by letter dated August 15,

27 2008 WFB, again acting in its capacity as the administrator of the CIC Plan, rejected Pierce's

28 request for review of the denial of his claim for benefits under the plan. Thus, Pierce has exhausted

1 his remedies under the CIC Plan, and has finally and conclusively been denied any and all benefits
2 under that plan.

3
4 **FIRST CAUSE OF ACTION**
(Breach of Contract - GBB)

5 22. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

6 23. The promises and representations referred to in paragraph 10, above, constituted
7 offers by GBB to cause the CIC Plan to pay Severance Benefits to Pierce in the event that he
8 elected not to remain in the full-time employment of WFB after the merger, notwithstanding that
9 Pierce might have been offered the opportunity to continue working for WFB in a position
10 comparable to that which he held at GBB.

11 24. Pierce accepted the offers referred to in the preceding paragraph, both expressly and
12 by his conduct in continuing to work at GBB through the effective date of the merger, thereby
13 giving rise to an express contract between Pierce and GBB.

14 25. It was an express, alternatively implied, term of the contract referred to in the
15 preceding paragraph that GBB would cause the CIC Plan to be amended, if and to the extent
16 necessary, to provide the benefits promised and represented by GBB.

17 26. GBB breached the contract formed by the offer and acceptance referred to in
18 paragraphs 23 and 24, above, by refusing and/or failing to cause the CIC Plan to pay Severance
19 Benefits to Pierce after the effective date of the merger, on his election not to remain in the full-
20 time employment of WFB.

21 27. As a result of GBB's breach referred to in the preceding paragraph, Pierce has been
22 damaged in an amount equivalent to the benefits that he would have received had GBB fulfilled its
23 promises and representations, in an amount according to proof, but which is not less than \$250,000.

24 28. As the successor entity following the merger between GBB and WFB, WFB is
25 responsible for the payment of all liabilities of GBB, under Corporations Code section 1107.
26 Consequently, WFB is liable for the damages sustained by Pierce as a consequence of GBB's
27 breach.

28 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

SECOND CAUSE OF ACTION
(Breach of Contract - WFB)

29. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

30. The promises and representations referred to in paragraph 10, above, which were also made by and/or on behalf of WFB, constituted offers by WFB to cause the CIC Plan to pay Severance Benefits to Pierce in the event that he elected not to remain in the full-time employment of WFB after the merger, notwithstanding that Pierce might have been offered the opportunity to continue working for WFB in a position comparable to that which he held at GBB.

31. Pierce accepted the offers referred to in the preceding paragraph, both expressly and by his conduct in continuing to work at GBB through the effective date of the merger, thereby giving rise to an express contract between Pierce and WFB.

32. It was an express, alternatively implied, term of the contract referred to in the preceding paragraph that WFB would cause the CIC Plan to be amended, if and to the extent necessary, to provide the benefits promised and represented by WFB

33. WFB breached the contract formed by the offer and acceptance referred to in paragraphs 30 and 31, above, by refusing and/or failing to cause the CIC Plan to pay Severance Benefits to Pierce after the effective date of the merger, on his election not to remain in the full-time employment of WFB.

34. As a result of WFB's breach referred to in the preceding paragraph, Pierce has been damaged in an amount equivalent to the benefits that he would have received had WFB fulfilled its promises and representations, in an amount according to proof, but which is not less than \$250,000.

WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

THIRD CAUSE OF ACTION
(Promissory Estoppel - GBB)

35. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

36. The promises and representations referred to in paragraph 10, above, constituted promises by GBB to cause the CIC Plan to pay Severance Benefits to Pierce in the event that he elected not to remain in the full-time employment of WFB after the merger, and notwithstanding

1 that Pierce might have been offered the opportunity to continue working for WFB in a position
2 comparable to that which he held at GBB.

3 37. Pierce relied on the promises and representations referred to in the preceding
4 paragraph, both expressly and by his conduct, including but not limited to by continuing to work at
5 GBB through the effective date of the merger, and in not seeking alternative employment.

6 38. GBB failed and/or refused to perform in accordance with its promises and
7 representations referred to in paragraph 36, above, by refusing and/or failing to cause the CIC Plan
8 to pay Severance Benefits to Pierce after the effective date of the merger.

9 39. As a result of GBB's failure and/or refusal to perform referred to in the preceding
10 paragraph, Pierce has been damaged in an amount equivalent to the benefits that he would have
11 received had GBB fulfilled its promises and representations, in an amount according to proof, but
12 which is not less than \$250,000.

13 40. Equity requires that GBB should be held liable for the damages sustained by Pierce,
14 in that the injustice to Pierce resulting from GBB's non-performance of its promises and
15 representations can be avoided only by the enforcement of those promises and representations.

16 41. As the successor entity following the merger between GBB and WFB, WFB is
17 responsible for the payment of all liabilities of GBB, under Corporations Code section 1107.
18 Consequently, WFB is liable for the damages sustained by Pierce as a consequence of GBB's
19 failure and/or refusal to perform.

20 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

21 **FOURTH CAUSE OF ACTION**
22 **(Promissory Estoppel - WFB)**

23 42. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

24 43. The promises and representations referred to in paragraph 10, above, constituted
25 promises by WFB to pay Severance Benefits to Pierce in the event that he elected not to remain in
26 the full-time employment of WFB after the merger, and notwithstanding that Pierce might have
27 been offered the opportunity to continue working for WFB in a position comparable to that which
28 he held at GBB.

46. As a result of WFB's failure and/or refusal to perform referred to in the preceding paragraph, Pierce has been damaged in an amount equivalent to the benefits that he would have received had WFB fulfilled its promises and representations, in an amount according to proof, but which is not less than \$250,000.

WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

(Fraud – Intentional Misrepresentation – GBB)

49. By making the promises and representations to Pierce that are referred to in paragraph 10, above, the authorized agents of GBB referred to in paragraph 11, above, represented to Pierce that important facts were true, namely that if he continued to work for GBB through the merger with WFB then he would not be forced to take a position with WFB after the merger that he did not want and would be entitled to receive Severance Benefits if he elected not to take a full time position with WFB.

51. Based on WFB's conduct subsequent to the effective date of the merger in denying that GBB promised and represented that he:

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1 want; and,

2 (b) would be entitled to receive benefits under the CIC Plan if he elected not to take new
3 full-time positions with WFB;

4 Pierce alleges on information and belief that the said promises and representations were false.

5 52. Based on WFB's conduct subsequent to the effective date of the merger in denying
6 that GBB made the promises and representations referred to in the preceding paragraph, Pierce
7 alleges on information and belief that the said promises and representations were made knowing of
8 their falsity or recklessly and without regard for the truth thereof.

9 53. The authorized agents of GBB referred to in paragraph 11, above, made the
10 promises and representations to Pierce that are referred to in paragraph 10, above, with the
11 intention that Pierce should rely on the truth of such promises and representations.

12 54. Pierce reasonably relied on the said promises and representations, among other
13 things, by continuing to work for GBB until the effective date of the merger, and not pursuing other
14 employment opportunities, in the expectation that if he chose not to work full-time with WFB after
15 the merger he would receive the Severance Benefits under the CIC Plan.

16 55. As a result of Pierce's reliance on GBB's promises and representations, he has been
17 damaged in an amount according to proof, but which is not less than \$100,000.

18 56. As the successor entity following the merger between GBB and WFB, WFB is
19 responsible for the payment of all liabilities of GBB, under Corporations Code section 1107.
20 Consequently, WFB is liable for the damages sustained by Pierce as a consequence of GBB's fraud.

21 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

22 **SIXTH CAUSE OF ACTION**
23 (Fraud – Intentional Misrepresentation - WFB)

24 57. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

25 58. By making the promises and representations to Pierce that are referred to in
26 paragraph 10, above, the authorized agents of WFB referred to in paragraph 11, above, represented
27 to Pierce that important facts were true, namely that if he continued to work for GBB through the
28 merger with WFB then he would not be forced to take a position with WFB after the merger that he

1 did not want and would be entitled to receive Severance Benefits if he elected not to take a full time
2 position with WFB.

3 59. The above promises and representations were made by WFB with the intent to
4 induce Pierce to continue working for GBB until after the merger with WFB.

5 60. Based on WFB's conduct subsequent to the effective date of the merger in denying
6 that it promised and represented that he:

7 (a) would not be forced to take a position with WFB after the merger that he did not
8 want; and,

9 (b) would be entitled to elect benefits under the CIC Plan if he elected not to take a full-
10 time position with WFB;

11 Pierce alleges on information and belief that the said promises and representations were false.

12 61. Based on WFB's conduct subsequent to the effective date of the merger in denying
13 that it made the promises and representations referred to in the preceding paragraph, Pierce alleges
14 on information and belief that the said promises and representations were made knowing of their
15 falsity or recklessly and without regard for the truth thereof.

16 62. The authorized agents of WFB referred to in paragraph 11, above, made the
17 promises and representations to Pierce that are referred to in paragraph 10, above, with the
18 intention that Pierce should rely on the truth of such promises and representations.

19 63. Pierce reasonably relied on the said promises and representations, among other
20 things, by continuing to work for GBB until the effective date of the merger, and not pursuing other
21 employment opportunities, in the expectation that if he chose not to work full-time with WFB he
22 would receive the Severance Benefits under the CIC Plan.

23 64. As a result of Pierce's reliance on WFB's promises and representations, he has been
24 damaged in an amount according to proof, but which is not less than \$100,000.

25 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.
26
27
28

SEVENTH CAUSE OF ACTION

(Fraud – Promise Without Intention To Perform – GBB)

65. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

66. By making the promises and representations to Pierce that are referred to in paragraph 10, above, the authorized agents of GBB referred to in paragraph 11, above, represented to Pierce that important facts were true, namely that if he continued to work for GBB through the merger with WFB then Pierce would not be forced to take a position with WFB after the merger that he did not want and would be entitled to receive Severance Benefits if he elected not to take a full time position with WFB.

67. Based on GBB's conduct subsequent to making the promise and representations referred to above, including but not limited to GBB's refusal and/or failure to amend the CIC Plan to conform to GBB's promises and representations, Pierce alleges on information and belief that at the time that GBB made those promises and representations it had no intention of performing as promised and represented.

68. Based on WFB's conduct described above, Pierce alleges on information and belief that the said promises and representations were made knowing of their falsity or recklessly and without regard for the truth thereof.

69. The authorized agents of GBB referred to in paragraph 11, above, made the promises and representations to Pierce that are referred to in paragraph 10, above, with the intention that Pierce should rely on the truth of such promises and representations.

70. Pierce reasonably relied on the said promises and representations, among other things, by continuing to work for GBB until the effective date of the merger, and not pursuing other employment opportunities, in the expectation that if he chose not to work full-time with WFB after the merger he would receive the Severance Benefits under the CIC Plan.

71. As a result of Pierce's reliance on GBB's promises and representations, he has been damaged in an amount according to proof, but which is not less than \$100,000.

72. As the successor entity following the merger between GBB and WFB, WFB is responsible for the payment of all liabilities of GBB, under Corporations Code section 1107.

1 Consequently, WFB is liable for the damages sustained by Pierce as a consequence of GBB's fraud.

2 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

3 **EIGHTH CAUSE OF ACTION**

4 (Fraud – Promise Without Intention To Perform – WFB)

5 73. Pierce realleges and incorporates by reference paragraphs 1 through 21, above.

6 74. By making the promises and representations to Pierce that are referred to in
7 paragraph 10, above, the authorized agents of WFB referred to in paragraph 11, above, represented
8 to Pierce that important facts were true, namely that if he continued to work for GBB through the
9 merger with WFB then Pierce would not be forced to take a position with WFB after the merger
10 that he did not want and would be entitled to receive Severance Benefits if he elected not to take a
11 full time position with WFB.

12 75. Based on WFB's conduct subsequent to making the promise and representations
13 referred to above, including but not limited to WFB's refusal and/or failure to amend the CIC Plan
14 to conform to WFB's promises and representations, Pierce alleges on information and belief that at
15 the time that WFB made those promises and representations it had no intention of performing as
16 promised and represented.

17 76. Based on WFB's conduct described above, Pierce alleges on information and belief
18 that the said promises and representations were made knowing of their falsity or recklessly and
19 without regard for the truth thereof.

20 77. The authorized agents of WFB referred to in paragraph 11, above, made the
21 promises and representations to Pierce that are referred to in paragraph 10, above, with the
22 intention that Pierce should rely on the truth of such promises and representations.

23 78. Pierce reasonably relied on the said promises and representations, among other
24 things, by continuing to work for GBB until the effective date of the merger, and not pursuing other
25 employment opportunities, in the expectation that if he chose not to work full-time with WFB after
26 the merger he would receive the Severance Benefits under the CIC Plan.

27 79. As a result of Pierce's reliance on WFB's promises and representations, he has been
28 damaged in an amount according to proof, but which is not less than \$100,000.

NINTH CAUSE OF ACTION
(Negligent Misrepresentation - GBB)

80. Pierce realleges and incorporates by reference paragraphs 1 through 21, 49 through 51, and 53, above.

81. Based on WFB's conduct subsequent to the effective date of the merger in denying that it and/or GBB made the promises and representations referred to in paragraph 10, above, Pierce alleges on information and belief that the said promises and representations were made without reasonable grounds for believing that the promises and representations were true when made.

82. Pierce reasonably relied on the said promises and representations, among other things, by continuing to work for GBB until the effective date of the merger, and not pursuing other employment opportunities, in the expectation that if he chose not to work full-time with WFB he would receive the Severance Benefits under the CIC Plan.

83. As a result of Pierce's reliance on GBB's promises and representations, he has been damaged in an amount according to proof, but which is not less than \$100,000.

84. As the successor entity following the merger between GBB and WFB, WFB is responsible for the payment of all liabilities of GBB under Corporations Code section 1107. Consequently, WFB is liable for the damages sustained by Pierce as a consequence of GBB's fraud.

WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

TENTH CAUSE OF ACTION
(Negligent Misrepresentation - WFB)

85. Pierce realleges and incorporates by reference paragraphs 1 through 21, 58 through 60, and 62, above.

86. Based on WFB's conduct subsequent to the effective date of the merger in denying that it and/or GBB made the promises and representations referred to in paragraph 10, above, Pierce alleges on information and belief that the said promises and representations were made without reasonable grounds for believing that the promises and representations were true when made.

87. Pierce reasonably relied on the said promises and representations, by, among other things, continuing to work for GBB until the effective date of the merger, and not pursuing other

1 employment opportunities, in the expectation that if he chose not to work full time with WFB he
2 would receive the Severance Benefits under the CIC Plan.

3 88. As a result of Pierce's reliance on WFB's promises and representations, he has been
4 damaged in an amount according to proof, but which is not less than \$100,000.

5 WHEREFORE, Pierce prays for judgment as set out in the Prayer, below.

6
7 **PRAYER**

8 WHEREFORE, Pierce prays for judgment against WFB as follows:

9 1. On the First Cause of Action, for breach of contract, for damages according to proof
10 in an amount not less than \$250,000;

11 2. On the Second Cause of Action, for breach of contract, for damages according to
12 proof in an amount not less than \$250,000;

13 3. On the Third Cause of Action, for promissory estoppel, for damages according to
14 proof in an amount not less than \$250,000;

15 4. On the Fourth Cause of Action for promissory estoppel, for damages according to
16 proof in an amount not less than \$250,000;

17 5. On the Fifth Cause of Action, for fraudulent misrepresentation, for damages
18 according to proof in an amount not less than \$100,000;

19 6. On the Sixth Cause of Action, for fraudulent misrepresentation, for damages
20 according to proof in an amount not less than \$100,000;

21 7. On the Seventh Cause of Action, for promissory fraud, for damages according to
22 proof in an amount not less than \$100,000;

23 8. On the Eighth Cause of Action, for promissory fraud, for damages according to
24 proof in an amount not less than \$100,000;

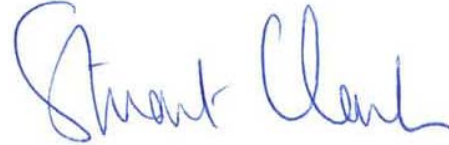
25 9. On the Ninth Cause of Action, for negligent misrepresentation, for damages
26 according to proof in an amount not less than \$100,000;

27 10. On the Tenth Cause of Action, for negligent misrepresentation, for damages
28 according to proof in an amount not less than \$100,000;

- 1 11. For interest at the rate of 10% per annum;
- 2 12. For costs of suit; and
- 3 13. For such further or alternative relief as may be appropriate.
- 4

5 Dated: August 29, 2008

CARR & FERRELL *LLP*



By: _____

STUART C. CLARK
CHRISTINE S. WATSON

Attorneys for Plaintiff
PATRICK PIERCE

DEMAND FOR JURY TRIAL

Plaintiff Patrick Pierce hereby demands a jury trial of all issues in the above-captioned action which are triable to a jury.

Dated: August 29, 2008

CARR & FERRELL *LLP*

By: 

STUART C. CLARK
CHRISTINE S. WATSON

Attorneys for Plaintiff
PATRICK PIERCE